IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT

JODHPUR

O R D E R

M/s. Rivona Industries Ltd. **VS**. The Customs, Excise & Service Tax Appellate Tribunal & Ors.

D.B. CIVIL WRIT PETITION NO.1534/2007

Under Article 226 and 227 of the Constitution of India

Date of Order : 26th March, 2007.

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE SATYA PRAKASH PATHAK

Mr Anand Purohit for petitioner.

BY THE COURT:- (Per Hon'ble Mr. Rajesh Balia, J.)

Having heard learned counsel for the petiotioner, we are of the opinion that no case of interfernce is made out in the order of the Customs Excise & Service Tax Appellate Tribunal, New Delhi dated 5th December, 2006 by which the Tribunal has granted interim order waving 50% of excise duty levied against him for the

purpose of pre-requisite of hearing of the appeal, inter alia, on the ground that shortage of the goods noticed by the preventive staff during the visit to their premises has been admitted and on above aspect, the matter is to be examined. Thus, the order passed by the Tribunal is founded on relevant consideration and reasonable premise.

Learned counsel for the petitioner has placed reliance on a decision of this Court rendered in D.B. Civil Writ Petition No.4153/2005 (Hindustan Zinc Ltd. Vs. Union of India & Ors.) decided on 20.01.2006.

However, as per the order relied on by the petitioner the Tribunal was directed to hear the appeal on merit with the pre-condtion of deposit of 50% of the Excise Duty, which had already been deposited by the petitioner in terms of the direction issued by this Court at interim stage. In the present matter, the petitioner has been granted interim order waving depositing of 50% of duty due against him as pre-condition. On that premise, the order passed by the Tribunal is in line with the order relied on by the petitioner. Hence, the said order does not assist the petitioner.

The writ petition fails and is dismissed. However, if the petitioner deposit the amount, his appeal be decided as far as possible within two months thereafter.

[SATYA PRAKASH PATHAK], J. [RAJESH BALIA], J.

vijayant